IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1039/2002

Reserved on.18.6.2007

Decided on. 25.7.2007

Jatinder Kumar **…Petitioner.**

Versus

State of H.P. & others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No*

For the petitioner : Ms. Rashmi Bhardwaj, Advocate.

For the respondents Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan & Ms. Meenakashi Sharma, Dy. AGs.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner had filed a complaint with the Commissioner-cum-Secretary (Vigilance) to the Government of Himachal Pradesh on 16.12.1997 against Shri J.D. Bhardwaj, Superintending Engineer, Irrigation and Public Health Mechanical Circle and Sh. Manmohan Singh Parmar, Assistant Engineer, Irrigation and Public Health, Store Sub Division, Sanjauli. When no action was taken on the application dated 16.12.1997, he sent a reminder to the Financial Commissioner-cum-Secretary (Vigilance) on 31.1.1998. Ultimately Secretary (Law) sent a communication to the Superintendent of Police (Vigilance) to take appropriate action vide letter dated 22nd April, 1998.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No

A regular inquiry No.ACD/SR-4/IPH-2/98 dated 26.3.1998 was registered at Police Station Anti Corruption Zone Shimla.

Ms. Rashmi Bhardwaj, Advocate appearing on behalf of the petitioner had strenuously argued that the State had incurred a loss of Rs. 16.60 lakhs by the illegal acts of Mr. J.D. Bhardwaj, Superintending Engineer and Mr. Manmohan Singh Parmar, Assistant Engineer. She had further argued that the work order has been placed with the contractor without following the mandatory procedure of calling for the tenders. She had also contended that the Assistant Engineer was only competent to call for the tenders, the value of which was not more than Rs. 30,000/-; and the Assistant Engineer could only make the payment through hand receipt up to Rs. 250/-.

The well established procedure for calling for the tenders is that the same are published in the news papers for healthy competition. In the present case the notice inviting tenders were only displayed on the notice board. The work was allotted to one Sh. Abdul Gaffar by the Assistant Engineer and the same was approved by the Superintending Engineer. The Assistant Engineer on the basis of the notification dated 15th November, 1996, was competent to call for the tenders up to the value of Rs. 30,000/- only. The value of the tenders in the present case was more than Rs. 30,000/-. The Superintending Engineer at the time of granting approval had over looked this important fact. The work had been allotted to Abdul Gaffar at the inflated rates resulting in loss of about Rs. 16 lakhs to the State Government. The Assistant Engineer was competent only to make hand receipt of Rs. 250/-. The Inquiry Officer though had taken into consideration this aspect but in the ultimate analysis has given clean chit to the Assistant Engineer. The Assistant Engineer had given cash above Rs. 250/- by way of hand receipt which was not permissible. Initially the

inquiry was conducted by the Deputy Superintendent of Police (Vigilance), Anti-Corruption Zone, Shimla and subsequently the enquiry was entrusted to Sh. Bachiter Singh, Inspector, Anti-Corruption Zone, Shimla. The Deputy Superintendent of Police in his inquiry dated 22.3.1998 had given clean chit to both the officers without taking into consideration the mandatory procedure for inviting tenders as well as for disbursement of payment to the contractors. The Deputy Superintendent of Police had abruptly closed the inquiry only on the ground that the petitioner's transfer stood cancelled. Similarly, Sh. Bachiter Singh, Inspector could not give clean chit to the officers concerned by making an observation that all the codal formalities were gone into at the time of awarding the work to the contractors and making payments to them.

Accordingly the two inquiries dated 22.3.1998 and 27.6.1999 are quashed and set aside. Additional Director General of police (Vigilance) H.P. is directed to assign the inquiry to an officer not below the rank of Superintendent of Police for *de novo* inquiry on the basis of the complaint dated 16.12.1997. The Registry is directed to handover the record as summoned on 18.6.2007 to the Additional Director General of police (Vigilance) H.P. forthwith.

Consequently the writ petition is disposed of. There shall be no order as to costs.

(Rajiv Sharma), Judge

July 25, 2007
Awasthi